

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934, Release No. 93551 / November 10, 2021
ADMINISTRATIVE PROCEEDINGS, File No. 3-20650

In the Matter of

American CryptoFed DAO LLC,
Respondent.

**RESPONDENT AMERICAN CRYPTO FED
DAO LLC'S MOTION FOR LEAVE TO FILE
A MOTION TO REQUEST THE DIVISION OF
ENFORCEMENT TO PROVE THAT LOCKE
AND DUCAT TOKENS ARE SECURITIES**

On June 7, 2023, the Securities and Exchange Commission ("Commission" or "SEC") issued an ORDER DENYING MOTION TO DISMISS ("June 7, 2023 Order", Release No. 97659) which denied the effectiveness of a request for Form 10 withdrawal ("Withdrawal Request") filed by American CryptoFed DAO LLC ("American CryptoFed" or "Respondent") 11 months earlier on July 6, 2022. The only reason that American CryptoFed filed a request to withdraw its Form 10 registration statement, was because the Division of Enforcement's June 3, 2022 letter stated, "you choose to register these tokens as securities by filing with the Commission a Form 10". The Commission's June 7, 2023 Order acknowledged American CryptoFed's rationale by stating the following:

The Withdrawal Request sought Commission consent pursuant to Securities Act Rule 477 to withdraw the Form 10 registration statement because, in Respondent's view, the "Locke token and Ducat token are not securities." (p.1).

Given that the Commission's June 7, 2023 Order denied American CryptoFed's withdrawal request for its Form 10, the Commission and its subsidiary divisions **indisputably** have the burden of proof obligation pursuant to 5 U.S. Code § 556 (d) to prove that American CryptoFed's Locke and Ducat tokens are securities subject to its jurisdiction. The first sentence of the plain text of 5 U.S. Code § 556 (d) states: *Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.* (Emphasis

added). In RESPONDENT AMERICAN CRYPTO FED DAO LLC'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS AND BRIEF IN SUPPORT OF ISSUING A STOP ORDER filed on April 3, 2023 ("Opposition Brief"), at Section 4.4 (p.20-28), American CryptoFed systematically proved that American CryptoFed's Locke and Ducat tokens are not securities. In the Division of Enforcement's Reply to American CryptoFed's Opposition Brief, filed on April 18, 2023, **the Division had the opportunity, but failed to provide any rebuttal to American CryptoFed's proof.** The Division failed to comply with the requirement mandated by *SEC v. W.J. Howey Co.*, 328 US (1946), at 298, "Form was disregarded for substance and emphasis was placed upon economic reality", by stating "We also remind you that you choose to register these tokens as securities by filing with the Commission a Form 10", and by repeatedly refusing to provide the "substance" of proof. This substantial factual dispute as to whether American CryptoFed's Locke and Ducat tokens are securities, should deny any summary disposition without public hearing.

Therefore, American CryptoFed sent a letter dated June 11, 2023 to the Division (attached as Exhibit A, *see* page 7-8), and met and conferred on June 15, 2023 to discuss the issue, but failed to reach an agreement. Accordingly, American CryptoFed respectfully requests that the Commission grant American CryptoFed's leave to file a motion to request the Division to prove that American CryptoFed's Locke and Ducat tokens are securities.

Dated: June 17, 2023

Respectfully submitted

/s/ Scott Moeller

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this, **RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION FOR LEAVE TO FILE A MOTION TO REQUEST THE DIVISION OF ENFORCEMENT TO PROVE THAT LOCKE AND DUCAT TOKENS ARE SECURITIES**, was filed by eFAP and was served on the following on this 17th day of June 2023, in the manner indicated below:

By Email:

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By /s/ Scott Moeller

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